

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NEBRASKA DATA CENTERS, LLC,

Plaintiff,

vs.

LEO KHAYET,

Defendant.

8:17CV369

ORDER

Defendant has moved to compel Plaintiff to produce discovery showing Robert W. Futhey and the Fraser, Stryker Law Firm are actually authorized to represent Plaintiff in the above-captioned litigation. (Filing No. [19](#)). Defendant argues “[i]f Mr. Futhey cannot evidence satisfactorily that he is representing Nebraska Data Centers LLC, through a constituent or legal member of that particular legal entity, with the authority to commence and direct legal proceedings on behalf of Nebraska Data Centers LLC, then Mr. Futhey must withdraw his representation of his client.” (Filing No. [19](#), at CM/ECF p. 1).

Defendant has failed to show that any discovery has been served on Plaintiff. The court cannot enter an order compelling Plaintiff or its counsel of record to respond to discovery that was never served.

Perhaps more importantly, based on Defendant’s exhibits (Filing Nos. [19-1 through 19-7](#)), and the court’s records:

- Nebraska Data Centers, L.L.C. (NDC) was formerly known as Nebraska Colocation Centers, L.L.C., (NCC) and they are the same entity, (see, 8:15-cv-00037-JMG-CRZ Gilkerson v. Nebraska Colocation Centers, L.L.C., Filing No. [101](#) (audio file);

- The above-captioned action seeks a declaration that the August 8, 2017 Consulting Agreement between Plaintiff and Defendant is terminated, Plaintiff has complied with all terms and conditions of the Agreement, and Plaintiff owes no money to Defendant, (Filing No. [1](#));
- Jerry Appel, identified as President of NCC, (Filing No. [19-7](#)), which is currently known as NDC, sent a letter to Defendant on October 4, 2017, instructing Defendant that any correspondence regarding termination of the Agreement between NDC and Defendant “should be sent to our attorneys at Fraser Stryker PC LLO, 409 S 17 Street., Omaha, Nebraska 68102, Attn: Mark R. O’Siochain.” (Filing No. [19-3](#), at CM/ECF p. 2); and
- Robert W. Futhey is an attorney within the Fraser, Stryker Law Firm.

Accordingly,

IT IS ORDERED:

1) Defendant’s pro se motion to compel Robert W. Futhey and the Fraser, Stryker Law Firm to produce discovery showing they are actually authorized to represent Plaintiff in this litigation, (Filing No. [19](#)), is denied.

2) Defendant’s motion to file his evidence as restricted access documents, (Filing No. [20](#)), is denied.

November 21, 2017.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge